IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06/08/2004

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THE HONOURABLE MR.JUSTICE N.KANNADASAN

WRIT PETITION NO.9064 OF 1997
AND
W.P.M.P.NO.14467 OF 1997

Kailasam .. Petitioner

-Vs-
HTL Ltd.,
(Formerly Hindustan
Teleprinters Ltd.)
GST Road, Guindy,
Chennai-32. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondent in Ref.No.LC/35.1 dated 11.2.1997 and quash the same and direct the respondent to give effect to the order No.8A, 2.4 dated 2.7.1993 in respect of the petitioner herein and consequently, pay the amount due thereon and the VRS Benefits accruing out of the same in accordance with the effect of the order dated 2.7.1993.
!For petitioner : Mr.P.N.Prakash
^For respondents : M/s.S.Ramasubramanian Associates

:ORDER

The petitioner has joined the Hindustan Teleprinters Limited during September 1993 as a Skilled Operator. Subsequently, he has acquired educational qualifications viz., Degree in Law (BGL) and M.A. degree in Public Administration. In view of the qualification acquired by him, he was transferred to the Public Administration Department by order dated 8.3.1998. Thereafter number of promotions were made in the Administration side under service conditions, which is also applicable to him and the people who were very much lesser qualifications than the petitioner were promoted as officers. Since the petitioner's name was not considered for such promotion, he has submitted his representation to the management. In the meanwhile the petitioner was served with an order dated 2.7.1993 fixing scale of pay of Rs.1365-2744 . The petitioner has accepted the said scale of pay under protest on the ground that he can pursue with the representation submitted to the respondent for further promotion. Since the petitioner has expressed his acceptance under protest, he was informed by a letter dated 1 .9.1993 that the order dated 2.7.1993 is kept in abeyance. Consequently, the petitioner has

also sent a further appeal to the Chairman and the Managing Director on 12.10.1993. But however, no order was passed.

2. In the meanwhile, the management has introduced Voluntary Retirement Scheme during September 1993, which was opted by the petitioner. The petitioner was relieved from service on 25.3.1994 under the said scheme. However, when the benefits were disbursed to the petitioner under the said scheme, it was not in accordance with the scale of pay as communicated by proceedings dated 2.7.1993. Thereafter, the petitioner has approached this Court by filing a writ petition in W.P. No.12347 of 1996, wherein a direction was issued to the respondent to dispose of the representation submitted by the petitioner dated 30.1 .1996. In pursuance of the same, the impugned order dated 11.2.1997 came to be passed by the respondent which is now under challenge in the above writ petition.

3. The learned counsel for the petitioner contended that the respondent has denied the benefit of Voluntary Retirement Scheme by disbursing the amount due to him on the sole ground that the petitioner has not accepted the proceedings dated 2.7.1993, which is not justified. The learned counsel further contended that the petitioner has addressed the authorities expressing his intention to accept the said scale of pay, under protest, since he has already pursuing his earlier representation for fixing the higher scale of pay. The learned counsel for the petitioner further contended that since no order was passed on the earlier representation submitted by him to the authorities concerned, he was constrained to inform the authorities that he is prepared to accept the fixation of scale of pay in proceedings dated 2.7.19 93 under protest and the same cannot be put against him when his application under Voluntary Retirement Scheme is accepted.

4. Per contra, the learned counsel for the respondent contended that this Court has no jurisdiction to exercise its powers under Article 226 of the Constitution of India in view of the fact that the respondent cannot be construed within the meaning of Article 12 of the Constitution of India. Learned counsel further contended that even though the respondent's company was originally Government owned company, subsequently it became a Public Limited company with effect from the year 2001 onwards. The learned counsel further contended that the petitioner cannot seek the relief as a matter of right in view of the fact that the revised scale of pay as per proceedings dated 2.7.1993 was not made applicable to the petitioner. Had the petitioner accepted the revised scale of pay unequivocally without any protest, there would not be any difficulty for the respondent to consider his representation under Voluntary Retirement Scheme treating the scale of pay as set out in the proceedings dated 2.7.1993. The learned counsel further contended that if the relief is granted in favour of the petitioner similar claims will be made by other employees also which would cause hardship to the respondent.

5. I have considered the rival contentions of the learned counsel for both sides.

6. It is not disputed that by order dated 2.7.1993 the scale

of pay in respect of the petitioner was revised as 1365-2744. The said communication was passed in respect of several employees including the petitioner pursuant to the 12(3) settlement. On receipt of the said communication, the petitioner through his letter dated 13.7.1993 has informed the respondent that he is willing to opt for fixing the above scale of pay after getting his annual increment for 1993. However, the respondent as per its communication dated 26.7.1993 directed the petitioner to indicate his willingness as to whether he accepted the fixation of the higher scale of pay or not unconditionally. The petitioner by a communication dated 5.8.1993 has informed the respondent that he is willing to accept the fixation of revised scale of pay as per the proceedings dated 2.7.1993 under protest, but however, insisted them to consider his earlier representation. On receipt of the above communication, the respondent by a letter dated 1.9.1993 has informed the petitioner that proceedings dated 2.7.1993 is kept in abeyance. As rightly contended by the learned counsel for the petitioner, merely because the petitioner has informed the authorities that his grievances should be looked into, about which he has sent several representations even prior to the fixation of the revised scale of pay, he cannot be found fault when he has accepted the fixation of revised scale of pay under protest. The petitioner, who is an aggrieved employee is always entitled to pursue earlier representations sent by him prior to the fixation of revised scale of pay, in fact he has already approached this Court as stated supra, by filing a writ petition to the effect that his representation has to be considered. In the backdrop of above factual situation of the case, I am of the considered opinion that the petitioner has really got valid grievance and as such he was constrained to inform the respondent that he intends to accept the revised fixation of scale of pay under protest.

7. With regard to the other submissions made by the learned counsel for the respondent to the effect that the respondent company is not amenable jurisdiction under Article 226 of the Construction of India, it is not disputed that on the date of filing of the writ petition, the respondent company was a Government owned company and as such this court has entertained the writ petition. Even though the learned counsel for the respondent relied upon a decision rendered by this Court in P.SUBBAN v. HINDUSTAN TELEPRINTERS, LTD., (2003 (3) L.L.N. 1079), wherein a decision of the Division Bench was also referred to, I do not think that the facts in the said decision are applicable to the facts of the case on hand.

8. In the instant case, the respondent themselves have already passed an order fixing the higher scale of pay which was accepted by the petitioner under protest. There is no disputed question of fact is available in the case on hand in order to direct the petitioner to take recourse through other appropriate forum. Further the amount involved in the instant case will be very meagre i.e. few thousands, for which the petitioner cannot be forced to approach an alternate forum merely after a period of seven years from the date of filing the writ petition. The apprehension raised by the learned counsel for the respondent that the several similar claims will be filed by other affected employees, has no relevance as on today, since the Voluntary Retirement Scheme was introduced as early as in the year 1993 and the petitioner has agitated about his grievance from the said date and the writ

petition as having been filed in the year 1997, I do not think that other employees can cite the order passed in the present writ petition as a precedent. If any such claims are raised, they are affected by the principles of laches. Further, I make it clear the above order in the present writ petition is purely applicable only with regard to the petitioner concerned and it cannot be considered as a precedent in respect of other claims if any filed.

9. For the reasons stated above, the Writ petition succeeds and the same is allowed. Consequently, the

respondent is directed to disburse Voluntary Retirement Scheme emoluments to the petitioner in the revised scale of pay in proceedings dated 2.7.1993. Time for compliance three months from the date of receipt of the order.

No costs.
Consequently, W.P.M.P.NO.14467 OF 1997 is closed.

gr.